DOCUMENT RESUME

ED 475 547 HE 035 789

TITLE	Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity.
INSTITUTION	Office for Civil Rights (ED), Washington, DC.
PUB DATE	2003-03-00
NOTE	41p.
AVAILABLE FROM	ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.Tel: 877-433-7827 (Toll Free); Fax: 301-470-1244; e-mail: edpubs@inet.ed.gov. For full text: http://www.ed.gov/ocr.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	*Affirmative Action; *College Admission; College Applicants; College Students; Diversity (Institutional); *Diversity (Student); Racial Composition; *Racial Differences; Selection; Selective Admission
IDENTIFIERS	Neutrality

ABSTRACT

This publication describes "race-neutral" programs being implemented across the United States to work toward diversity in higher education without granting preferences based on race and ethnicity. Educational institutions will find that there are dozens of race-neutral options available and that the early results of these programs are promising. The publication does not endorse any particular program but does aim to foster innovative thinking about using race-neutral means to produce diversity among educational institutions. Race-neutral programs can be divided into two categories. Most attention is focused on admissions plans, but a large category of race-neutral efforts encompasses those designed to develop the skills, resources, and abilities of students who might not otherwise apply to and succeed in college. Descriptions of these developmental approaches include descriptions (1) expansion of advanced placement courses; (2) partnerships between colleges and low-performing schools; (3) partnerships between the College Board and educational institutions; (4) expansion of online course offerings; (5) expansion of financial aid; (6) recruitment and outreach; (7) College Summit; and (8) federal efforts (GEAR UP, TRIO Programs, and the State Scholars Initiative. Admissions approaches are also described, including socioeconomic approaches, targeted class-rank approaches, and the state programs of Texas, Florida, and California. (SLD)

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ED 475 547

RACE-NEUTRAL ALTERNATIVES IN POSTSECONDARY EDUCATION:
INNOVATIVE APPROACHES TO DIVERSITY

March 2003

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U.S. Department of Education
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March 2003

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

OFFICE OF THE ASSISTANT SECRETARY

March 2003

Leaders of the Education Community,

Americans overwhelmingly agree that diversity in our schools, neighborhoods, workplaces, and community organizations is enormously positive. In the past, many educational institutions have tried to reach this important goal by giving preferences to certain individuals based on their race or ethnicity. People of goodwill have reached different conclusions about the merits of these policies. But there are serious and important reasons for educational institutions to look for new alternatives. Policies granting preferences on the basis of race and ethnicity raise constitutional questions and are increasingly being overturned in the courts. Moreover, voters in various jurisdictions have passed state and local initiatives restricting the use of racial preferences. These legal and policy trends mean that we must work together to look for new solutions.

This publication describes innovative "race-neutral" programs being implemented across the country. Educational institutions will find that there are dozens of race-neutral options available to them. They will also find that the early results from these programs are promising. Moreover, the initial positive results are only the beginning; the full advantages of many of the race-neutral alternatives described in this publication will not be fully felt until they are seriously implemented and several classes of students have been able to benefit from them.

This publication does not endorse any particular program discussed in these pages. Rather, our hope is to foster innovative thinking about using race-neutral means to produce diversity among educational institutions. The purpose of this publication is to help create a positive climate in which such race-neutral alternatives can be seriously considered.

Sincerely,

Gerald A. Reynolds
Assistant Secretary for Civil Rights
U.S. Department of Education

INTRODUCTION

President George W. Bush has said, "America is a diverse country, racially, economically, and ethnically. And our institutions of higher education should reflect our diversity. A college education should teach respect and understanding and goodwill. And these values are strengthened when students live and learn with people from many backgrounds."[1]

> "Some states are using innovative ways to diversify their student bodies. Recent history has proven that diversity can be achieved without using quotas."
>
> President Bush

Young people benefit greatly when they are exposed to a wide variety of people-for example, people from various geographic regions, socioeconomic backgrounds, cultural heritages and different points of view. Students grow substantially as they exchange ideas with others who have exceptional character and personal talents; who are involved in a variety of extracurricular activities; who have a number of volunteer and work experiences; and who have extraordinary dedication to particular causes. It is precisely that diversity, broadly understood, that President Bush and the Department of Education want to help educational institutions achieve.

Race-Preferential Versus Race-Neutral Approaches

Postsecondary institutions are grappling with the question of how to ensure that students come from a wide variety of backgrounds. For many years, some educational institutions have used "race-preferential" approaches to admitting students. That is, these colleges and universities use race and/or ethnic origin as a factor in determining which students to admit.

However, many colleges and universities, as well as elementary and secondary schools, are reconsidering preferences based on race and ethnicity. In several states, courts have struck down racial preferences that were being used by educational institutions.[2] In others, voters have passed referenda directing that

[1] President George W. Bush, *President Bush Discusses Michigan Affirmative Action Case*, at http://www.whitehouse.gov/news/releases/2003/01/20030115-7.html, (January 15, 2003).

[2] Federal courts in a number of states have struck down admissions procedures that used racial criteria and the question of whether the use of racial criteria is constitutionally permissible in college admissions procedures are now before the Supreme Court. *See, e.g., Johnson v. Board of Regents*, 263 F.2d 1234 (11th Cir. 2001) (a University of Georgia policy to give numerical bonuses to minority applicants' admissions qualification scores, otherwise derived from the admissions test and high school grades, found arbitrary and not narrowly tailored to the purpose of promoting diversity); *Hopwood v. Texas*, 236 F.3d 256 (5th Cir. 2000); *cert. denied*, 533 U.S. 929(2001) (the University of Texas Law School's use of racial criteria in admissions process held unconstitutional); *Grutter v. Bollinger*, 288F.3d 732 (6th Cir. 2001), *cert. granted*, __U.S. __, 123

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state institutions can neither discriminate against, nor grant preferential treatment toward, persons on the basis of race or national origin.[3] In the state of Florida, Governor Bush created a new equal opportunity initiative.[4]

Because of these strong legal and policy trends, many educational institutions have responded by looking for innovative "race-neutral" alternatives to ensure that their student bodies are accessible to people from a wide variety of backgrounds. In other words, they continue to strive for diversity, but are using admissions and college preparatory policies that do not focus on or single out racial or ethnic groups for preferential treatment-they are neutral toward race. For example:

- Many educational institutions are providing preferences on the basis of socioeconomic status;
- Colleges and universities are expanding their recruitment and outreach efforts by targeting students from schools who traditionally have not been "feeder schools" for those institutions;
- States are creating many new skills development programs-projects designed to improve educational achievement among students who attend traditionally low-performing schools. Examples include the Texas Advanced Placement Initiative and Florida's partnership with the College Board;
- Many universities are entering into partnerships with low-performing public schools to strengthen their students' ability to succeed in college; and,
- Texas, California and Florida have all created admissions plans for students who finish at the top of their high school classes.

Cataloging Race-Neutral Approaches

The purpose of this report is to describe a number of race-neutral approaches that postsecondary institutions across the country are using. This report cannot describe all race-neutral approaches because institutions are employing so many kinds of programs to help improve their communities and strengthen the diversity of their student bodies. Instead, this report highlights some notable race-neutral efforts currently employed.

S. Ct. 617, 71 U.S.L.W. 3387 (2002) (whether the University of Michigan Law School may use admissions procedures now before the Supreme Court); *Gratz v. Bollinger*, 135 F. Supp. 2d 790, *cert. granted* __ U.S. __, 123 S. Ct. 617, 71 U.S.L.W. 3387 (2002). (the University of Michigan's undergraduate admissions procedures now before the Supreme Court).

[3] CAL. CONST. ART.1 & 31(a); WASH. REV. CODE 49.60.400.

[4] *One Florida Initiative: Educating, Improving and Empowering*, at http://www.oneflorida.org (last visited Feb. 21, 2003).

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The primary purpose of this report is not to assess these programs; this should not be read as a "best practices" guide. This report merely describes these programs, relying primarily on a review of the literature published about these programs. This report provides nothing more than a catalog of options that are available.

After reading this catalog of programs, it will be clear to the reader that there are dozens of race-neutral options available to educational institutions and that the early results appear promising. The early results may also understate the full effectiveness of these programs-the true impact of these programs will not be known until they are implemented over time and in diverse, widespread educational contexts.

The purpose of this publication is to create a positive climate in which these race-neutral alternatives can be seriously considered.

Why Provide a Catalog?

We believe that this catalog or description of race-neutral approaches can significantly assist educational institutions across the country. First, focusing the nation's attention on innovative race-neutral programs will have civic benefits. These programs can help expand equal opportunity in our society while avoiding the controversy caused by traditional race-preferential policies. Race-neutral programs have the potential to promote diversity of viewpoint and experience without employing racial preferences. In other words, they respond to the goals of those on both sides of the divisive debate about the role of race in admissions. Civil rights progress in this country has often been stagnated by a focus on the zero-sum game of pitting one group against another. A serious effort to implement race-neutral programs, coupled with education reform efforts such as the No Child Left Behind Act of 2001 (No Child Left Behind), could help unite our country as we focus on attacking the root causes of the various achievement gaps.

Second, focusing on race-neutral alternatives promotes the principles and goals of No Child Left Behind. No Child Left Behind encourages innovative approaches to educating all of our young people. Many of these race-neutral programs are focused on closing the achievement gaps and promoting education within traditionally low-performing schools in a manner consistent with No Child Left Behind.

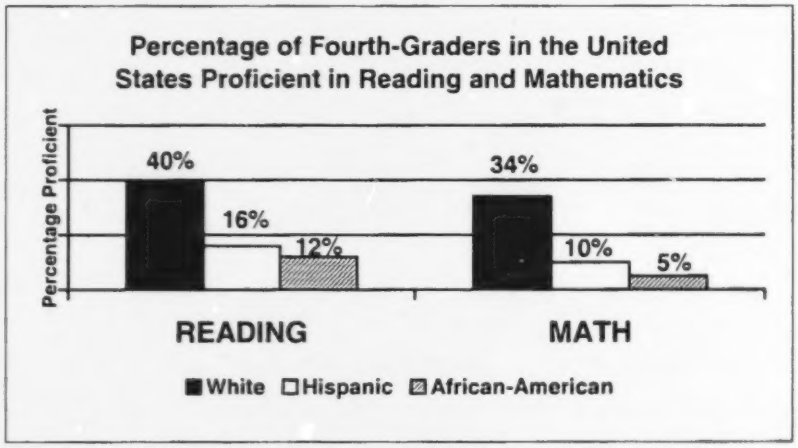
Finally, educational institutions need guidance on these issues. Race-preferential programs may trigger costly and counterproductive litigation. Implementing race-neutral programs will help educational institutions to minimize litigation risks they currently face.

NO CHILD LEFT BEHIND

> "Much progress has been made; much more is needed. University officials have the responsibility and the obligation to make a serious, effective effort to reach out to students from all walks of life, without falling back on unconstitutional quotas."
>
> President Bush

The goal of equal opportunity for all our citizens is elusive in large part because low-performing schools year after year, generation after generation, graduate young people who cannot compete on an equal basis with others. If we could ensure that all children receive the world-class education they deserve, the pool of applicants prepared to succeed in our selective institutions would be significantly diversified and enriched. No Child Left Behind addresses this critical area of need.

The story of American education today reads like a tragic novel for too many children. The achievement gaps in our schools are real and persistent. While 40percent of white fourth-graders are proficient or above in reading according to the National Assessment of Educational Progress reading assessment, only 16 percent of their Hispanic peers and 12 percent of their black peers read at that level.[5] In math, 34 percent of white fourth-graders scored at or above proficient, while just 5 percent of African American and 10 percent of Hispanic students reached that level.[6] The statistics are similar in science and other areas of study.[7] The evidence is clear that many schools fail to



U.S. Department of Education, *The Nation's Report Card: Fourth Grade Reading 2000,* p.30-31 (2001).

[5] U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, *The Nation's Report Card: Fourth-Grade Reading 2000* at 30-31 (2001).

[6] U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, *The Nation's Report Card:Mathematics 2000* at 60-61 (2001).

[7] U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, *The Science Highlights: The Nation's Report Card* at 81 (2002). *See also,* U.S. Department of Education, Office of Educational Research and Improvement,

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adequately prepare their students-a great many of whom are minorities-for the competition for admission to our elite colleges and universities.

A similar achievement gap exists between low-income and more economically advantaged children. This can be measured by looking at the gap between the academic achievement of students eligible for the federal free and reduced-price lunch program and more economically advantaged students not eligible for the program.[8] While 41 percent of non-eligible fourth-grade children are proficient or above in reading, only 14 percent of their low-income peers read at that level.[9] In math, 33 percent of economically advantaged fourth-graders in public schools are proficient or above, while just 9 percent of low-income students performed at this level.[10]

The No Child Left Behind Act, a bipartisan effort at education reform, proceeds from the assumption that every child can learn and excel. By authorizing increased federal funding levels while holding states accountable for the achievement of all students and by empowering parents with information and options, No Child Left Behind aims to close the achievement gaps. No Child Left Behind is holding schools accountable for the achievement of all students without regard to their race, national origin, disability and other factors. Four principles are embedded in No Child Left Behind: (i) stronger accountability for results; (ii) increased flexibility and local control; (iii) expanded options for parents and students; and (iv) an emphasis on teaching methods that have been proven to work. No Child Left Behind will make our colleges and universities more diverse not through artificial means such as the use of racial preferences, but rather by ensuring a more diverse pool of fully prepared, high-achieving students.

While No Child Left Behind will deliver dramatic reforms to our educational system, the country must also renew family structures and rebuild our urban communities. We cannot expect young people to concentrate on homework and research when the conditions in their homes and neighborhoods are so difficult. Families and communities must recapture a culture of learning-an environment that both nurtures young people as they learn and places heavy demands on them to be successful in the classroom. President Bush's faith-based initiative is emphasizing work in these areas.

National Center for Educational Statistics, *The Nation's Report Card: Geography 2001* at 30 (2002).

[8] *Cf.*, John Ogbu, *Black American Students in an Affluent Suburb: A Study of Academic Disengagement* (Lawrence Erlbaum Associates 2003).

[9] National Center for Education Statistics, *The Nation's Report Card: Fourth Grade Reading 2000*, *supra* note 5 at 40.

[10] National Center for Education Statistics, *The Nation's Report Card: Mathematics 2000*, *supra* note 6 at 287.

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DEVELOPMENTAL APPROACHES

Race-neutral programs can be divided into two categories. Most of the attention is focused on admissions plans (for example, the Texas 10 Percent Plan). However, another large category of race-neutral efforts must also be considered-policies designed to develop the skills, resources and abilities of students who might not otherwise apply to and succeed in, college. These race-neutral programs seek to improve the educational performance of our nation's students, particularly those who attend traditionally low performing schools, to such an extent that the admissions process will naturally produce a diverse student body. In other words, these policies try to ensure that students from traditionally low-performing schools receive such a good education that they can qualify for admission to an excellent postsecondary institution.

These developmental or systemic approaches to the problem attempt to meet two goals: first, to build skills in students who would not otherwise be competitive in the admissions process; and, second, to provide support throughout the post-secondary educational experience that will enable these students to succeed. State and federal initiatives also reach out to students from traditionally low-performing schools to encourage them to attend and graduate from highly selective universities through recruitment and financial aid strategies.

The following is a description of a number of race-neutral developmental approaches.

Expansion of Advanced Placement Courses

In August 1999, the University of Texas System created an Advanced Placement Initiative to diversify the range of students who take college-level courses before they graduate from high school. Taking Advanced Placement (AP) courses helps high school students in three ways. First, AP students may learn more because they are in a more demanding and challenging course. Second, AP students often receive enhanced grade point averages. For example, in some districts, an "A" in an AP course can earn the student a 4.5 grade point average in that class instead of a 4.0. Naturally, a student who has achieved a 4.5 grade point average in several classes will present a more compelling application to a college admission official than a student who has not had this opportunity. Finally, AP students can often earn college credits.

The AP Initiative tries to reach underserved students populations that have not previously participated in the AP program. The state found that in 1998, only

slightly more than one-half of middle and high schools in Texas had any student taking an AP or International Baccalaureate exam.[11]

The AP Initiative provides incentives for schools and teachers to offer more courses. For example, teachers are offered the opportunity to participate in summer institutes at University of Texas schools that enable them to teach the AP courses. The state pays each teacher who attends a seminar a stipend on the condition that the teacher begin at least one new AP course when he or she returns to school. Texas has expanded the number of AP Summer Institutes and has created a Master Teacher Summer Institute. Within the U.T. System, the number of teachers participating in AP Summer Institutes has grown from 1,882 in the first year of the initiative, to 2,584 in 2002, an increase of 37 percent.[12]

Schools are provided bonuses for each student who successfully completes one or more AP exams-in 2002; it was $100 per student per successful exam. In 2002, the state paid schools $3.5 million under this incentive program. The state also offers financial incentives to students to encourage them to take the courses and pass the examinations (paying, in some cases, all but $5 of the $80 fee for an exam).[13]

The results have been dramatic. Participation in AP courses in Texas has increased since 1999 by 29,012 students-a 57 percent increase. A great deal of this growth comes from schools where AP courses were never before offered. The percentage of minority students taking AP courses in Texas has increased by 74 percent for the same period. Participation in AP classes has grown steadily in all counties where there is a University of Texas-affiliated college or university, but most notably in the border regions that have a majority Hispanic population.

The state of Florida has created a similar initiative. The state found that AP courses were rarely offered in schools serving low-income populations.[14] Florida, working closely with the College Board, offered incentives similar to those in Texas. State law provides that, for each student who scores a 3, 4 or 5 on an AP exam, teachers receive a $50 bonus. The law also provides that AP teachers in a low performing school (categorized as a "D" or "F" school) who have at least one

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[11] *U.T. System to Promote Advanced Placement Initiative with the Focus on Opportunities for Disadvantaged Students*, at http://www.utsystem.edu/news/1999/APInitiative8-12-99.htm (Aug. 12, 1999)

[12] Dr. Barbara Breier, *Advanced Placement Initiative Update – AP Summer Institute Director's Meeting* (Sept. 19, 2002)(on file with the Office for Civil Rights).

[13] Texas Education Agency, *Advanced Placement/International Baccalaureate Incentive Program – Funded Components for School Year 2002-03*, at http://www.tea.state.tx.us/taa/adv102802.html (last visited Feb. 21, 2003).

[14] *The One Florida Accountability Commission: An Independent Review of Equity in Education and Equity in Contracts Components of One Florida*, at 4 (June 2002), available at http://www.myflorida.com/myflorida/government/otherinfo/documents/executive_summary.doc.

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student scoring a 3 or higher receive a $500 bonus. Again, the results are significant. Prior to the new initiative, just over 4,000 students in low-performing schools were enrolled in AP courses. By 2002, over 7,000 students were enrolled-an increase of more than 3,000 students in traditionally low-performing high schools who are now able to take these more challenging courses. Gaston Caperton, the president of the College Board, has stated that, "Florida is now the leader in the number of black students taking advanced placement courses."[15]

The U.S. Department of Education also administers two related programs: the Advanced Placement Test Fee program and the Advanced Placement Incentive Program. The purpose of the programs is to support state and local efforts to increase access to AP classes and tests for low-income students. The fee program makes awards to state education agencies to cover part or all of the cost of test fees for low-income students who are enrolled in an AP course and plan to take the exam. The incentive program provides funds to states and local school districts with the purpose of expanding access to AP classes. For example, funds are provided for the development of pre-advanced placement courses, for coordination and articulation between grade levels to prepare students for academic achievement in AP courses and exams and to provide teacher training. The Department spent $22 million in fiscal year 2002 on these AP initiatives.[16]

Partnerships Among Colleges and Low-Performing Schools

Many colleges and universities around the country are investing in near elementary and secondary schools. These postsecondary institutions recognize that these types of partnerships expand their educational mission by giving professors and students an opportunity to put into practice the theories they are learning in the classroom. Moreover, they recognize that helping to better educate young people who attend traditionally low-performing schools will broaden the pool of students who can qualify for admission to college.

For example, the University of California higher education system has adopted a detailed plan to expand partnerships with elementary and secondary schools.[17] U.C. has four types of outreach programs. First are "student-centered programs." University of California students and professors work directly with K-12 students in the areas of tutoring, mentoring, advising about college, helping with college

[15] Tampa Tribune, *Bush: Data Shows Increase in Black Students Taking Advance Placement Tests*, (Oct. 23, 2002), available at http://www.oneflorida.org/myflorida/government/governorinitiatives/one_florida/articles/test.html

[16] U.S. Department of Education, *Advanced Placement Incentives*, at http://www.ed.gov/offices/OESE/SIP/programs/apip.html (last visited March 10, 2003).

[17] *Expanding Educational Opportunity: A Status Report on the Educational Outreach and K-12 Improvement Programs of the University of California* (Fall 2001), available at http://www.ucop.edu/outreach/statusreport2001.pdf.

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preparatory coursework and helping to find educational experiences outside of the classroom that would be helpful to K-12 students. Nearly 100,000 K-12 students in California are now being tutored or mentored by U.C. students and professors.[18]

Second are "school partnerships." Each campus in the University of California system partners with K-12 schools that are the lowest performing in the state (established by the school's rank on the state's Academic Performance Index). The universities offer help in curriculum development, direct instruction, community engagement, and other assistance. These partnerships now extend to 256 low-performing California schools, including 73 high schools, 55 middle schools and 128 elementary schools.

Third, the University of California system offers a number of professional development programs to help K-12 teachers increase their skills and effectiveness. More than 70,000 teachers are served by teacher training initiatives such as the California Professional Development Institutes and the Subject Matter Projects. These programs are concentrated in the same schools that are the subject of the school partnerships-the state's low-performing schools.

Finally, there are informational programs-enrichment programs designed to provide information about effective ways to improve the educational system and provide additional opportunities for students in low-performing schools.

One example of an outreach program is UC Links, "a statewide network of after-school program sites, [that] offers computer and multi-media activities for low-income youth."[19] Another example is the Expedition program developed by U.C.-Berkeley students. It is an after-school program that helps low-income youth in Oakland explore their own community using "archeological inquiry and content as a learning framework." Anthropology undergraduates use hands-on activities, multimedia CD-ROMS and computer games, word processing and spreadsheets to introduce ancient history and cultures to middle school students.[20]

> "Academics and administrators throughout the system admit that the university would never have shouldered this burden had it not been for the elimination of affirmative action [racial preferences]; and many say that the price is worth paying."
>
> James Traub, "The Class of Prop. 209," *New York Times Magazine*, May 2, 1999.

California reports that the early results of these programs have been promising: "[T]he students with whom the University has worked have made substantial progress in recent years and the rates of change are expected to increase rapidly

[18] *Id.* at iii-iv.
[19] *Id.* at 6.
[20] *Id.*

over the next several years."[21] Establishing direct contacts with more than 100,000 at-risk children and 70,000 teachers will clearly change California's education landscape.

California's expanded outreach efforts have also encountered obstacles that must be overcome. One challenge is simply to coordinate all of the efforts. Another is to sustain the commitment to these outreach programs over the long haul and not to lose patience seeking immediate rewards: "Improving the educational fortunes of California's most educationally disadvantaged students is not a short-term endeavor, though short-term gains will be made. The ultimate objectives of the Educational Outreach and K-12 Improvement Programs are expected to take years to reach, making the sustained support of the University, its partners and the state critical to the success of these programs."[22]

A news article reporting on California's outreach programs concluded, "U.C. campuses are now reaching down into the high schools, the junior highs and even the elementary schools to help minority students achieve the kind of academic record that will make them eligible for admission, thus raising the possibility that diversity without preferences will someday prove to be more than a fond hope. Academics and administrators throughout the system admit that the university would never have shouldered this burden had it not been for the elimination of affirmative action [racial preferences]; and many say that the price is worth paying."[23]

The University of Pennsylvania has made a major commitment to the neighborhoods that surround its campus. The University established a Center for Community Partnerships to help build bridges between the University and the community of West Philadelphia.[24] The Center attempts to use the University's vast resources to help reform West Philadelphia's schools and community organizations. For example, the University offers approximately 130 courses in which community service is an element. One product of this community involvement is the West Philadelphia Improvement Corps (WEPIC), an organization created by undergraduates in an honors history course that has expanded to such an extent that it now works with approximately 10,000 children and family members. Through WEPIC, the Center has invested in University-assisted Community Schools, an effort to help reform the local schools. The Center sponsors an Urban Nutrition Initiative, involving approximately 1,000 young people in classes that promote health and nutrition in the context of social studies, math and language arts and Access Science, which connects professors and students in the Math, Physics, Chemistry and Biology departments with

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[21] *Id.* at 5.
[22] *Id.* at iv.
[23] James Traub, *The Class of Prop. 209*, *NEW YORK TIMES MAGAZINE*, May 2, 1999, at 46.
[24] *The Center for Community Partnerships* at www.upenn.edu/ccp (last visited March 10, 2003)

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teachers and students in the community schools. The University also leads an effort to coordinate with other colleges and universities in the Philadelphia area to expand the work (The Philadelphia Higher Education Network for Neighborhood Development) and is part of a national and international effort to encourage colleges and universities to invest in local communities (the WEPIC Replication Project).

The University of Vermont has created a partnership with one specific school–Christopher Columbus High School in Bronx, New York.[25] The University recognized that it receives very few applicants from students in urban schools such as Christopher Columbus. The admissions department from the University holds workshops for students and parents, attempting to demonstrate that college is a viable option for the graduates. The workshops initially focused on freshmen and sophomores, emphasizing early awareness of the option of attending college. University of Vermont education students teach at the high school as part of their course fieldwork experience and numerous professors have spent time teaching classes at the school or helping train teachers. The University also directly recruits from Christopher Columbus High School. It works closely with promising students from the school, flying them to the University for recruitment trips and attempting to secure financial aid to make tuition more affordable. A New York Times article on the Vermont-Christopher Columbus partnership noted, "In putting down roots in the Bronx, the University of Vermont joins a growing list of institutions in rural areas-including Colgate University, Skidmore College and St. Michael's, another Vermont college-that have created similar partnerships in recent years with public schools in New York or Boston. With federal courts in Texas and Georgia having chipped away at race-conscious admissions practices in recent years and the Supreme Court being urged to revisit the issue, the arrangements offer the prospect of an alternative....The university makes a direct pitch to students who might not otherwise have Vermont on their radar. (Many of the students from Columbus are immigrants or the children of immigrants from Africa and the Dominican Republic). And the students get an inside track on how to apply to a highly regarded public institution, with advising sessions conducted in their school by the very admissions officers who would soon be reading the

"In putting down roots in the Bronx, the University of Vermont joins a growing list of institutions in rural areas...that have created similar partnerships in recent years with public schools in New York or Boston. With federal courts in Texas and Georgia having chipped away at race-conscious admissions practices in recent years and the Supreme Court being urged to revisit the issue, the arrangements offer the prospect of an alternative."

New York Times, December 26, 2001

[25] *Christopher Columbus High School: University of Vermont Connection*, at http://www.columbushs.org/vermont.html. (last visited March 10, 2003).

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students' submissions."[26] More than thirty students from Christopher Columbus High School now attend the University of Vermont, meaning it "instantly became the single largest feeder to the university outside Vermont."[27]

The state of Florida also has instituted partnerships among universities and elementary and secondary schools. Every public and private community college and four-year institution has been challenged to form Opportunity Alliances with low performing elementary and secondary schools. Many of these Opportunity Alliances take place in high-poverty areas of the state. The universities are asked to provide tutoring for students, training for teachers and other assistance to those schools. For example, Florida Atlantic University (FAU) entered into partnerships with several schools. In one school, a university student recognized that the school could benefit from a grant to provide state money for mentoring; the student wrote the grant proposal and the school was awarded the money. One of FAU's partner schools moved from being classified by the state as a "D" school-low-performing-to a "B." The University of Florida has formed Opportunity Alliances with three low-performing schools. In addition to working closely with students from those schools, the University announced that it would offer full scholarships to the top five high school graduates from these partnership schools.[28]

Partnerships Among the College Board and Educational Institutions

In 2000, the state of Florida entered into a partnership with the College Board, the nonprofit education services association that seeks to prepare students for postsecondary education. The State provides the College Board with resources and provides it with access to Florida's students and teachers.[29] The College Board offers a number of different services to Florida's schools and attempts to concentrate its work in the low-performing school districts.

The partnership helps support students in a number of ways. It begins with helping to prepare students for the PSAT, a standardized test given to tenth graders. The state government provides the PSAT free to all students in Florida. The state was concerned that test preparation programs such as the College Board (and similar organizations) offers may not be taken by students from low-income families. By providing the test for free, the state seeks to attract students who might not have had the opportunity to attend college. The PSAT produces data

[26] *New York Times*, Dec. 26, 2001, *Id.*
[27] *Id.*
[28] *One Florida Accountability Commission Report, supra* note 16, at 29.
[29] *The College Board: Florida Partnership*, at http://www.collegeboard.com/floridapartnership/about/index000.html (last visited March 10, 2003).

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that are given to the student. This diagnostic information helps the student and the student's family understand how to best prepare for college. The test also produces data that are given to the school-helping to identify strengths and weaknesses in the student body and helping to identify students that should be targeted for advanced classes. The test produces data for colleges and universities, helping them to identify promising students. These policies have led to a 191 percent increase in the number of minority students who take the PSAT exam.[30]

The partnership helps students in other ways. For example, it offers free tutoring to interested students at local high schools. In cooperation with Florida's community colleges, tutoring opportunities have been offered at 62 of the lowest performing schools in the state, in which 107,000 students are served. The partnership also emphasizes SAT test preparation courses. More than 2,000 students have taken these courses through partnerships among the state of Florida, the College Board and the Urban League of Miami and the Urban League of Broward County. The College Board has provided free college planning and readiness materials to more than 275,000 public school students in English, Spanish and other languages. The focus of this effort has been to deliver information to students in low-performing schools.

The partnership also provides support for teachers. The College Board offers professional development workshops, primarily targeting those who work in difficult school districts. Teachers employed at the low-performing schools are given priority for any workshop they desire to attend and the state government pays the registration fees. Workshops are offered to train teachers in a number of areas, including how to prepare students to successfully complete standardized tests such as the Florida Comprehensive Assessment Test and the PSAT. The College Board provides teachers with strategies for integrating materials into their daily routine that will allow them to teach their typical curriculum as well as prepare the students to be successful in these critical tests. The workshops also certify teachers in administering AP courses. More than 1,000 teachers and administrators have enrolled in these professional development workshops.[31]

While the College Board has a statewide partnership with only one state, it has similar agreements with a number of school districts. For example, it has a similar agreement with the Charlotte-Mecklenburg school district, which has more than 100,000 students.[32] The partnership has resulted in a large increase in the number of students who take AP courses (the number of African Americans

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[30] *Governor Bush Applauds Increase in Students taking and Passing Advanced Placement Courses* at http://www.oneflorida.org/myflorida/government/governor/ini.../placement.courses_10-23-02.htm (Oct. 23, 2002).

[31] *One Florida Accountability Commission Report, supra* note 16, at 21.

[32] *Opening Classroom Doors: Strategies for Expanding Access to AP*, at 7 (College Board 2002).

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students enrolled has tripled since 1995-96) and who pass AP exams (more than 90 percent of the students in AP courses take the exams). But the partnership also emphasizes more than just getting senior high school students to take these more challenging courses. In addition, the College Board uses its Pacesetter program to implement changes to the curriculum, help teachers develop and assess the performance of students in English, math and Spanish courses. Each of the 16 high schools in the school district offers at least 12 AP courses and more than 300 teachers completed the AP training courses in 2001-02.

Other states and school districts could implement similar partnerships with the College Board or with similar organizations.

Expanding Online Course offerings

Students attending low-performing schools have less opportunity to take courses that will challenge them and help them to reach their full potential. Florida has bypassed poor school curricula by expanding the Florida Virtual School, which provides an online curriculum. The state has expanded the number of courses offered through this online option, and many minority students are taking advantage of them. In the 1999-2000 school year, only 200 minority students took classes from the Florida Virtual School; two years later, more than 1,200 minority students were enrolled.[33] Texas has similarly expanded the number of courses it offers online, and also emphasizes providing Advanced Placement classes for students.

Expanding Financial Aid

Some institutions are expanding access to financial aid as part of a strategy for diversifying the pool of students who have the skills to complete a college education but lack the resources.[34] U.T.-Austin's major new financial aid program is called the Longhorn Scholars and draws students from 70 high schools that were historically underrepresented at the university.[35] In the fall 2002 class, approximately 300 Longhorn Scholars received scholarships worth between $8,000 and $20,000 over four years. The University also provides the Scholars with academic advantages. The Longhorn Scholars: take freshman seminars and writing courses limited to 15 students; take interdisciplinary forums and seminars

[33] *One Florida Accountability Commission Report, supra* note 16, at 20.

[34] Race-preferential financial aid approaches are not discussed in this report since the purpose here is to describe only race-neutral policies. Race-preferential financial aid approaches still present litigation risks to educational institutions.

[35] Rose Gutfield, *Ten Percent in Texas*, Ford Foundation Report Online, Fall 2002 available at http://www.fordfound.org/publications/ff_report/view_ff_report_detail.cfm?report_index=355

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aimed at developing research relationships with faculty; have smaller sections of large lecture classes; and have their own advisers. In the fall of 2002, the 300 Longhorn Scholars were 58 percent Hispanic, 28 percent African American, 8 percent white and 6 percent Asian American. Texas A&M has a version of this type of program, called "Century Scholars."[36] Florida has similarly increased needs-based financial aid.[37]

President Bush announced in his proposed budget for 2004 a record amount of money for federal Pell Grants, which seek to ensure that low-income and disadvantaged students will be able to afford a postsecondary education.[38] The budget proposal includes a $1.4 billion increase for these grants, taking the funding to a record level of $12.7 billion. President Bush estimates that 4.9 million students would be able to take advantage of Pell Grants, nearly one million more than two years ago.

Recruitment and Outreach

Many students from low-performing schools never consider that college might be an option for them. In many neighborhoods where these schools are located, few people have attended postsecondary institutions and much of the economy of those areas is built on occupations that are not dependent on college graduation. Therefore, young people growing up in these communities are rarely presented with information about the opportunity to attend college.

All of the postsecondary institutions described in this report undertake active recruitment and outreach efforts. One of the early positive results of the Texas 10 Percent Plan discussed in more detail below is the vast increase in recruitment that has been undertaken by college officials.[39] The University of Texas and Texas A&M have greatly increased their efforts to appeal to a broader pool of students through the Longhorn Scholars and Century Scholars programs, among others. Another example is the University of Vermont's active recruitment of promising students from its partner high school. The University of Florida has hired four new admissions officers, and has provided funding for another three to four new officers in future years.[40]

Florida attempts to persuade all children in the state to consider the college

[36] *Id.*
[37] *One Florida Accountability Commission Report*, *supra* note 16, at 36.
[38] *President Bush to Propose Record $12.7 Billion for Pell Grants, Paige Says*, at http://www.ed.gov/PressReleases/02-2003/02012003.html, (Feb. 1, 2003).
[39] Gutfield, Ford Foundation Report Online, *supra* note 37.
[40] *Lt. Gov. Brogan Announces Increase in Minority Enrollment at the University of Florida*, at http://www.oneflorida.org/myflorida/government/governorinitiatives/one_florida/enrollment-9-6-02.html. (Sept. 6, 2002).

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opportunity in a variety of ways, such as providing the PSAT and PLAN tests free of charge to all students. Before, only students who were already aspiring to attend college (and could afford the fee) would sign up for these standardized tests. Now, more students are aware of the option of taking these exams and see it as an affordable opportunity. The result has been a two-year increase in African American PSAT test-takers of 176 percent. Similarly, there has been an increase of 257 percent in the number of Hispanics taking the PSAT in Florida.[41] These students are significantly more likely to see college as a viable option.

College Summit

College Summit is a national nonprofit organization that focuses on increasing the number of low-income students to enroll in college.[42] The College Summit believes that most low-income students do not attend college because they do not know their options and cannot successfully navigate through the process of applying to college. The organization argues that the highest performing low-income students are identified and then recruited by colleges and universities, but the "mid-performing" low-income students are left behind. These types of students in suburban schools are enrolling in college in part because they benefit from a culture that encourages college attendance-parents and neighbors who are college graduates themselves and school systems that are very familiar with the college enrollment process. However, low-income students who are not at the top of their classes but who are capable of being successful in postsecondary settings do not enroll because of a lack of information and encouragement.

The organization works directly with rising high school seniors by providing them with an intensive four-day summer workshop. During the workshop, students are educated about the options for financial aid and the process of applying to college. A professional college counselor also works with each student to help identify colleges that match their interests and abilities. The workshop focuses heavily on teaching writing skills through a methodology developed specifically for the College Board (the "Writing Team Method"). While the short-term goal is to produce an effective essay to accompany an application to college, the writing skills obviously help the student over the long term as well. The workshop also teaches the students how to fill out an application for college through a specialized software package. The students are also trained as peer leaders so that they can influence other students in their home school to consider the option of attending college.

The College Summit works with high schools to improve their ability to help students as well. High school counselors and other teachers join the students in

[41] *One Florida Accountability Commission Report, supra* note 16, at 18.
[42] *College Summit: Let Talent Shine*, at www.collegesummit.org, (last visited March 1, 2003).

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the essay writing and financial aid trainings sessions, and learn to implement the curriculum with all of their students throughout the school year. The organization also focuses on helping to develop high school guidance counselors who work in schools with high concentrations of low-income students. "What makes the college transition work for middle-class students is the presence of college-experienced parents who keep students on track through the maze of college essays, forms, and choices. College Summit trains teachers to play this management role at school," the organization claims.[43]

The organization partners with more than two dozen colleges, which host the workshops and provide other services to the students. Colleges and universities who have partnered with the College Summit have seen their student bodies enriched by the enrollment of low-income students who likely would not have come to their attention except for this innovative program. "Colleges need a larger pool of diverse talent. And they need a way to distinguish who-among the masses of mid-performing applicants-is most likely to succeed. Institutions receive a cost-effective way for colleges to look at the whole student. In exchange for hosting a College Summit workshop on their campus, College Summit provides Preview Portfolios-application materials, teacher recommendations, high school transcripts, etc.-on pre-screened, low-income students, early in the admissions process."[44]

Since the organization began in 1993, it has worked with more than 4,000 students from 80 high schools in 7 states and the District of Columbia. Of the students who attend a College Summit workshop, 79 percent enroll in college and 80 percent of those students have stayed in college.

Federal Efforts

The federal government has for many years sponsored a number of race-neutral programs designed to help young people excel in college. Educational institutions should be aware of these programs because they could make more and better use of these opportunities. In addition, these programs could serve as models for state and local governments that want to expand their own race-neutral efforts. The following is a brief description of three programs-only a few race-neutral federal programs.

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[43] *College Summit: Strengthening High School Guidance*, at www.collegesummit.org/whadis.html (last visited March 10 2003).

[44] *College Summit: Strengthening College Admissions*, at www.collegesummit.org/whacol.html, (last visited March 10, 2003).

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- Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

GEAR UP is a discretionary grant program administered by the U.S. Department of Education.[45] It is designed to increase the number of low-income students who are prepared to enter and succeed in postsecondary education. GEAR UP provides five-year grants to states and partnerships to provide services at high-poverty middle and high schools. GEAR UP grantees serve an entire cohort of students beginning no later than the seventh grade and follow the cohort through high school. GEAR UP funds are also used to provide college scholarships to low-income students.

GEAR UP employs partnerships committed to serving and accelerating the academic achievement of cohorts of students through their high school graduation. GEAR UP partnerships supplement (not supplant) existing reform efforts, offer services that promote academic preparation and the understanding of necessary costs to attend college, provide professional development, and continuously build capacity so that projects can be sustained beyond the term of the grant.

The Department of Education invested $285 million in fiscal year 2002 in the GEAR UP program, and the Department estimates that more than 1.2 million students benefited from the more than 300 grants awarded. For example, the Brookline Housing Authority received a GEAR UP grant to work with students and families who live in the public housing in that city. The National Association of Housing and Redevelopment Officials presented its Award of Excellence to the Housing Authority for the outstanding results its GEAR UP project has achieved.[46] The GEAR UP project in Oklahoma has been credited with vastly increasing the number of students who receive college tuition assistance. Prior to 1999-2000, the average number of students enrolled in Oklahoma's college tuition scholarship program was about 1,350 each year. Because of the GEAR UP initiative and other measures to make the tuition scholarship program more accessible, the enrollment increased by 9,735 students in 2000-2001. Nearly as many students enrolled in the program in 2000-2001 as in the first eight years of the program combined. The college tuition scholarship program pays tuition at any Oklahoma public two-year or four-year university for all students who successfully complete the program. [47]

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[45] *Gaining Early Awareness and Readiness for Undergraduate Programs* (GEAR-UP), at http://www.ed.gov/offices/OPE/gearup/index.html, (Dec. 6, 2002).
[46] *Gaining Early Awareness and Readiness for Undergraduate Programs* (GEAR-UP), *Success Stories*, at http://www.ed.gov/offices/OPE/gearup/gu-success.html, (last visited March 10, 2003).
[47] *Id.*

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- TRIO Programs

The federal TRIO Programs are educational opportunity outreach programs designed to motivate and support students from disadvantaged backgrounds.[48] The TRIO projects, originally a combination of three projects, now include six outreach and support programs targeted to serve and assist low-income, first-generation college and disabled students to progress through the academic pipeline from middle school to post baccalaureate programs. TRIO includes a training program for directors and staff of TRIO projects and a dissemination partnership program to encourage the replication or adaptation of successful practices of TRIO projects at institutions and agencies that do not have TRIO grants.

The programs include Upward Bound, Upward Bound Math/Science, Talent Search, and Educational Opportunity Centers. Another large component of TRIO is Student Support Services, which provides opportunities for academic development, assists students with basic college requirements, and serves to motivate students toward the successful completion of their postsecondary education. The goal of the Student Support Services (SSS) program is to increase the college retention and graduation rates of its participants and facilitate the process of transition from one level of higher education to the next. Low-income students who are first-generation college students and students with disabilities evidencing academic need are eligible to participate in SSS projects. Two-thirds of the participants in any SSS project must be either disabled or potential first-generation college students from low-income families. One-third of the disabled participants must also be low-income students. The Department of Education spent more than $800 million on the programs in fiscal year 2002.

- State Scholars Initiative

The Department's Office of Vocational and Adult Education (OVAE) administers an innovative project that provides high school graduates with the solid academic foundation that is necessary for their future success. Many argue that students who complete a more rigorous course of study increase their likelihood of postsecondary success-measured in terms of persistence and completion. It is also argued that students who enroll in rigorous courses gain greater proficiency in academic areas. For example, in Texas, where efforts have been under way to increase the number of students who complete a rigorous course of study, students who enroll and succeed in a sequence of challenging mathematics courses score more than 100 points higher on the SAT than those who do not.[49]

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[48] *Office of Post-Secondary Education - Programs, Federal TRIO Programs*, at http://www.ed.gov/offices/OPE/HEP/trio/index.html, (last visited March 10, 2003).
[49] College Board, *Profiles of College* at 3 (2000).

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On August 29, 2002, President Bush launched the State Scholars Initiative to provide support to states that are committed to improving the academic course of study for all students. The Center for State Scholars, in partnership with OVAE, will work initially in seven states. The initiative will ensure that schools are given support by local businesses and will coordinate efforts among the education officials in that state. The initiative seeks to encourage high school students to take a more challenging high school curriculum, including:

- 4 credits in English
- 3 credits in math (algebra I, geometry, algebra II)
- 3 credits in basic lab science (biology, chemistry, physics)
- 3.5 credits in social studies; and
- 2 credits in a foreign language.

Texas has had a Texas Scholars program since 1991, encouraging students to complete the challenging curriculum referred to as the Recommended High School Program (RHSP).[50] In fact, RHSP is now the presumed curriculum for all high school students. That is, students are automatically enrolled in these classes unless a parent opts the student out of that curriculum. Financial incentives are also given to encourage students to accumulate all of these credit hours. In 1999, the state legislature tied $100 million in college financial aid to students who complete these requirements. In 2001, the legislature increased the financial aid commitment to $330 million. There is an on-going effort to ask each college and university in Texas to make the RHSP a basic minimum requirement for admission.

The federally funded Center for State Scholars will explore the possibility of expanding these requirements into other states. This is another example of a race-neutral program that seeks to develop the skills of young people so that they are prepared to succeed in college without special preferences.

ADMISSIONS APPROACHES

Several state university systems have created race-neutral policies to determine which students are admitted and which are not. Presently there are two new major categories of race-neutral approaches to admissions. The first is a preference based on socioeconomic factors. The second is the class rank approach. Class-rank plans guarantee admission to state universities to high school seniors who graduate within a specified percentage of their school's senior class, and, in certain cases, fulfill certain other basic minimum requirements. Below is a description of these various approaches.

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[50] *Texas Scholars News and Information*, at http://www.texasscholars.org/background.html, (last visited March 10, 2003).

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Some educational institutions are replacing preferences based on racial or ethnic category with preferences based on an applicant's socioeconomic status. In other words, university admissions committees might favor students who have performed well despite having faced various social and economic obstacles. Advocates of socioeconomic preferences argue that a student from a single-parent family living in a neighborhood with high concentrations of poverty who has a B+ average and a 1000 score on the SAT is likely to be more resourceful and capable than a student from a wealthy suburban home who has had access to expensive after-school tutoring programs and has achieved an A- average with a 1200 score on the SAT.

The definition of socioeconomic disadvantage often begins with three key factors: parents' education, family income, and parents' occupation(s). Other factors are also often considered, including a family's net worth, family structure, school quality and neighborhood quality (for example, many argue that a neighborhood of concentrated poverty and high crime rates is not conducive to homework). All of these factors are quantifiable and can be made readily available when students complete their applications for college and for financial aid.

While race is not a factor in socioeconomic preference plans, certain minority students may benefit under many plans of this nature because their racial and ethnic groups are disproportionately disadvantaged according to socio-economic factors. For example, 22.7 percent of African Americans and 21.4 percent of Hispanics live below the poverty line compared with 7.8 percent of non-Hispanic whites.[51] Moreover, poor African Americans are six times as likely to live in concentrated poverty as poor whites.[52] While black income is 60 percent of white income, black net worth is just 9 percent of white net worth.[53] According to a recent RAND study, by the year 2015 Hispanics and African Americans will constitute 78 percent of those students having no parent with a high school diploma.[54]

Advocates for preferences based on socioeconomic status argue that the most glaring opportunity gaps in our educational system are between those from low-income families and those from middle-class and upper income families rather than between racial groups. Even with race-based preferences in place at most

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[51] U.S. Census Bureau, *Poverty in the United States: 2001* at 4 (September 2002).

[52] Richard D. Kahlenberg, *The Remedy: Class, Race and Affirmative Action* at 170 (Basic Books, 1996); Richard D. Kahlenberg, *In Search of Fairness*, WASH. MONTHLY, June 1998, at 27 (citing various studies).

[53] Kahlenberg, *The Remedy* at 168; Kahlenberg, *In Search of Fairness*, at 27.

[54] National Task Force on Minority High Achievement, *Reaching the Top*, at 11 (College Board 1999).

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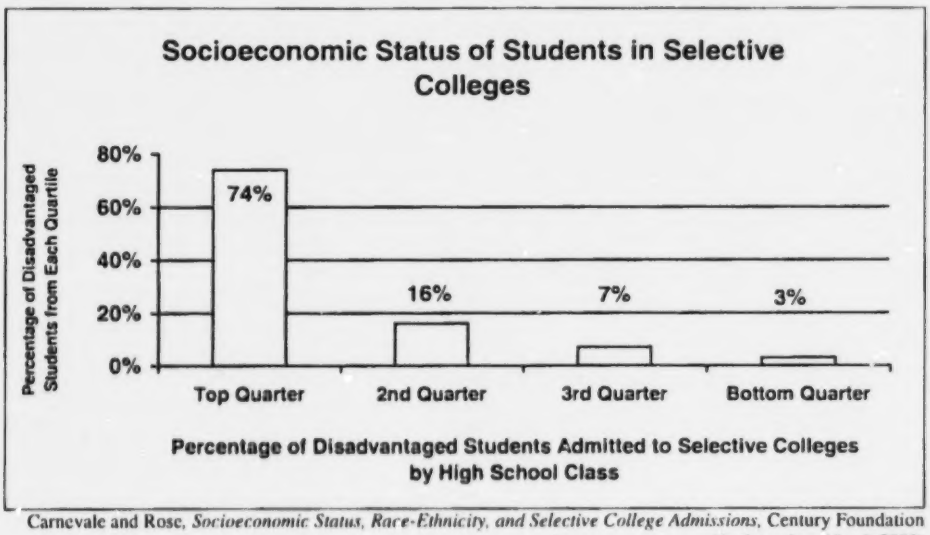
selective colleges, low-income students are virtually absent. According to one study that examined the nation's most selective 146 colleges, only 3 percent of students come from the bottom socioeconomic quartile, and only 10 percent from the bottom half, while 74 percent come from the top economic quartile. In other words, economically disadvantaged students are 25 times less likely to be found on selective college campuses as economically advantaged students.[55]



Carnevale and Rose, *Socioeconomic Status, Race-Ethnicity, and Selective College Admissions*, Century Foundation (forthcoming, March 2003)

Many believe that, to truly attack the root causes of failure in our educational system, we should focus on socioeconomic status rather than using race as an imperfect proxy for disadvantage. Race is an unreliable indicator of disadvantage. One noted study found that 86 percent of black students at the selective colleges studied were from middle or high socioeconomic backgrounds.[56]

A number of postsecondary institutions are implementing preferences based on socioeconomic status. One prominent example is the University of California system's Comprehensive Review. In November 2001, the University of California Board of Regents adopted this admissions plan to supplement the 4 Percent Plan. While students are admitted to the U.C. system through the 4 Percent Plan (and the other routes described below), Comprehensive Review helps determine which particular campus a student will attend. In addition to looking at grades and test scores, admissions officers now look at a number of

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[55] Anthony Carnevale and Stephen Rose, *Socioeconomic Status, Race/Ethnicity, and Selective College Admissions*, A White Paper, The Century Foundation, (forthcoming March 2003).

[56] William Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* at 49 (1998). While citing statistics demonstrating the socioeconomic gaps, Bowen and Bok lay out the arguments opposing granting preferences based on socio-economic status. *Id.* at 46-50.

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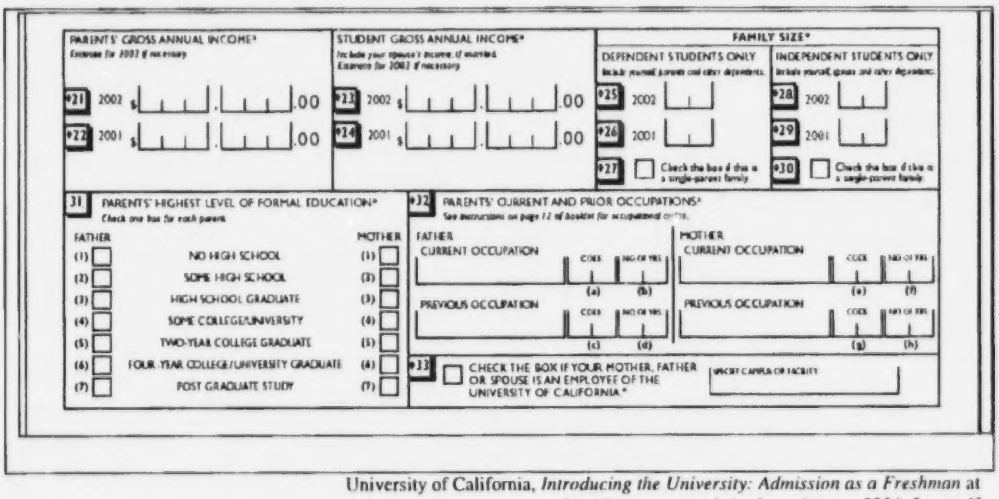
factors, including, "[a]cademic accomplishments in light of an applicant's life experiences and special circumstances, such as disabilities, low family income, first generation to attend college, need to work, disadvantaged social or educational environment, difficult personal and family situations, refugee status or veteran status."[57] This excerpt from the U.C. application illustrates how such information is gathered:



University of California, *Introducing the University: Admission as a Freshman* at http://www.ucop.edu/pathway/ucapp_0304_form.pdf

Other specific examples of socioeconomic affirmative action plans include:

University of California at Los Angeles School of Law

After the 1996 elections, when California voters enacted Proposition 209 prohibiting using race as a factor in public university admissions, UCLA Law School adopted a socioeconomic preference program. Most students are now admitted based solely on their academic performance, but some are admitted based on a combination of academic achievements and socioeconomic obstacles overcome. Among the socioeconomic factors considered are: highest level of education attained by parents; parents' primary occupation; number of years spent in a single-parent home; age of applicant at the time of a parent's death (if applicable); total parent income and assets during the previous year; and the number of hours worked per week during the student's years in college.

The University of Texas

Texas supplements the Top 10 Percent plan with a flexible set of criteria to determine which students are admitted. The criteria include many that relate to

[57] *University of California: Introducing the University: Admission as a Freshman*, at http://www.ucop.edu/pathways/ucapp_0304_form.pdf (last visited Feb. 25, 2003).

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hardship or obstacles that have been overcome, such as: whether the applicant would be in the first generation of his or her family to attend or graduate from college; whether the applicant is bilingual; the financial status of the applicant's school district; the quality of the applicant's school (whether it is a low-performing school); and the applicant's responsibilities while attending school, including whether he or she has been employed and whether he or she has helped to raise children or other similar considerations.

The University of Florida system

Florida, like Texas, is best known for its class-rank alternative to racial preferences-the Talented 20 plan. But as in Texas, the class rank approach has been supplemented by consideration of socioeconomic factors. Florida admissions officials look for "holistic information," which allows campuses to admit students on race-neutral grounds. The holistic approach gives an advantage, for example, to students from families with a low gross income, students who attend a low-performing high school or students whose parents did not attend college."[58]

Elementary and Secondary Schools

In recent years, a number of elementary and secondary school districts across the country have also adopted needs-based school integration plans. These plans seek to reduce concentrations of poverty, based on research suggesting that all students do better when there is a core of middle class families in a school. The number of students attending school districts with socioeconomic integration policies has skyrocketed from roughly 20,000 in 1999 to more than 400,000 today.[59]

For example, in 1992 the school board in La Crosse, Wisconsin implemented a policy to better integrate the schools by economic status. The board required that no school have less than 15 percent or more than 45 percent of its students eligible for free lunch (130 percent of the poverty line). The board took this approach largely because teachers said that in their judgment, the driving educational issue has been concentrations of poverty rather than race. Today, despite a relatively high poverty rate, La Crosse reports that it has a low dropout rate and rising test scores.

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[58] *University of Florida, Holistic Information*, at http://www.reg.ufl.edu/pdf/holistic-info-web.pdf, (last visited Mar. 10, 2003).

[59] Richard D. Kahlenberg, *The Century Foundation Issue Brief Series, Economic School Integration: An Update*, (September 2002).

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Texas 10 Percent Plan

In 1996, the Fifth Circuit Court of Appeals issued its ruling in *Hopwood v. State of Texas.*[60] The Court of Appeals ruled that colleges and universities could not use race as a factor in admissions decisions. President Bush, as Governor of Texas, implemented the Texas 10 Percent Plan, which was a bipartisan response to *Hopwood.* Under this admissions plan, the top 10percent of every state accredited public or private high school's graduates are guaranteed admission into the University of Texas campus of their choice.

When a student is admitted, the college or university he or she chooses will review the applicant's record to determine if he or she might require additional college preparatory work. If so, the institution may require the student to participate in appropriate enrichment or orientation programs.

Proponents of the Texas plan argue that class-rank approaches reward students who have worked hardest and achieved the most. In 2000, the U.T.-Austin freshman class included individuals from 135 high schools that were not represented on that campus before the Hopwood decision.[61] Moreover, they argue that class-rank approaches promote diversity of region, economic class and social background. For instance, several previously under-represented schools throughout the state are now sending a significant number of students to U.T.'s flagship school, including students from clusters of inner-city minority high schools in Dallas-Ft. Worth, Houston and San Antonio, as well as from rural white high schools in East and Northeast Texas.[62]

Florida's Talented 20 Program

Florida has created a similar plan, which guarantees all public high school seniors who graduate within the top 20 percent of their class will be admitted to the state university system.[63] The rankings are compiled after the student's seventh semester, but the student must later prove that he or she completed the eighth semester as well. In addition, the student must also complete 19 credits of college preparatory course work required by the state. The student must also have an SAT or ACT score, although there is no minimum score required.

The state of Florida supplements the Talented 20 program with a variety of partnerships, challenges and financial incentives designed to assist students and

[60] *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert denied*, 518 U.S. 1033 (1996).
[61] Rose Gutfield, Ford Foundation Report Online, *supra* note 37.
[62] *Id.*
[63] FLA. ADMIN. CODE ANN. R.C-6.002(5), (2002).

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low-performing schools and to prepare the students for college. Talented 20 students are given priority for certain state needs-based financial assistance grants, which were expanded to accommodate the increased demand that the program has generated.

While the Texas plan allows Top 10 students to attend any of the state's colleges or universities that he or she selects, Florida's plan only guarantees that the student will be accepted into one of the state's schools. In other words, after the student is automatically guaranteed admission into the state system, he or she must still compete to gain a slot at the institution he or she prefers.

California's 4 Percent Plan

In response to a state referendum (Proposition 209) that eliminated race-preferential programs, the University of California system implemented a complicated and sophisticated admissions process. California's admissions system uses class rank, but in addition uses a number of other methods to determine which students it will admit.

There are three ways for a student to be admitted to the U.C. system.[64] First, the student can be admitted through "Eligibility in the Statewide Context," which involves three elements. The "subject requirement" means that a student must complete 15 specified high school classes. The "scholarship requirement" means that a student must have a grade point average and standardized test score that fits within a sliding scale "eligibility index;" and, the "examination requirement" means that a student must have a sufficient standardized test score. Most students become U.C.-eligible through "Eligibility in the Statewide Context."

The second path for admission is through "Eligibility in the Local Context," which is also known as the "4 Percent Plan."[65] The top 4 percent of students from each California high school's graduating senior class are designated as "UC-

[64] *University of California: Introducing the University: Admission as a Freshman,* at http://www.ucop.edu/pathways/infoctr/introuc/fresh.html, (last visited Feb. 25, 2003).

[65] California has a three-part postsecondary education system that includes the University of California system, the California State University system, and a statewide system of community colleges. The University of California System operates 8 campuses that serve undergraduates, as well as graduate and research institutions. A ninth campus is scheduled to begin admitting full-time undergraduate students in the fall of 2004. This system operates highly selective undergraduate institutions such as the University of California at Berkeley and the University of California at Los Angeles. The California State University System operates 23 campuses, including California State Universities at Bakersfield, Chico and Fresno. Finally, California operates a community college system comprised of 108 two-year colleges. This report discusses only the University of California system because it includes the state's most highly selective undergraduate institutions.

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eligible." To secure admission, UC-eligible students must also successfully complete 11 specific units of college preparatory coursework by the end of the junior year.

Finally, some students are admitted through "Eligibility by Examination Alone," which allows some to be admitted solely because of an extraordinarily high-standardized test score.

Once a student is admitted into the U.C. system, each U.C. campus evaluates the student and uses a set of criteria to determine which students will be admitted into that school. The factors include grade point average in U.C.-required courses; standardized test scores; number of and performance in honors and AP courses; quality of the senior year program, as measured by the type and number of academic courses in progress or planned; and quality of academic performance relative to educational opportunities available in the applicant's school. The administrators also evaluate the location of the applicant's secondary school and residence to provide for geographic diversity in the student population and to account for the wide variety of educational environments existing in California.

Targeted class-rank approaches

As noted above, the state of Florida guarantees admission to students who finish in the top 20 percent of their graduating class; the state does not, however, guarantee which state institution the student will be admitted to. The University of Florida decided to supplement the Talented 20 Plan by offering admission directly to the top 5 percent of public high school graduates. The University of Florida will also provide financial aid to those students.[66] The University also announced that it will provide full scholarships to the top five students who graduate from the three schools with which it has an Opportunity Alliance partnership.[67]

The University of Texas Law School has also decided to create a targeted class-rank admissions approach. The Law School recognized that it has very few students who are graduates of several colleges located in southern Texas. It therefore created a policy of offering admission to the top 5 percent of graduates at five specified colleges.

Pennsylvania has adopted an admissions program for graduates of its two-year community colleges that guarantees students who successfully complete an associate degree program at one of the community colleges admission into a state system of higher education university. This Academic Passport for such students

[66] *One Florida Accountability Commission Report, supra* note 16, at 3, 29.
[67] *Id.*

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is extremely beneficial for minority students because historically, a higher percentage of college-bound minority high school graduates in Pennsylvania attend a community college first, rather than a four-year college. In part because of this admissions preference program, the number of students transferring from schools such as the Community College of Philadelphia to Cheyney University of Pennsylvania (the oldest historically black university in the country) has significantly increased.[68] Florida has a similar program, which it refers to as its 2+2 system.[69] The state has worked to ensure that community colleges courses are easily transferred to state universities for credit (through, in part, a common course numbering system). Florida believes that the 2+2 admission policy ensures that even the most disadvantaged students are able to work toward and ultimately receive a university degree.

RACE-NEUTRAL PROGRAMS – PROMISING RESULTS

The expansion of innovative race-neutral programs has been an important recent development in civil rights law and education policy. Since many race-neutral programs are still in their infancy, conclusive data on their effects are not yet available. Nevertheless, the early results are promising. Race-neutral alternatives have moved from the theoretical to the practical. Colleges and universities, as well as education officials at the federal, state and local levels are implementing concrete new programs that lay the foundation for further progress.

As educational institutions analyze different race-neutral opportunities, the measures of success should be clearly established. Much of the analysis to date has focused on only one factor: what is the "racial dividend" of these policies? In other words, most analysts have looked at whether minorities have been admitted to college in the same numbers as they were under the earlier race-preferential systems.

However, a more complete measure of success is necessary. These programs must be evaluated on several grounds, including whether they:

- allow institutions to meet their educational goals;
- meet legal and constitutional requirements;
- provide social benefits;
- bring broader socioeconomic diversity to our schools, thereby promoting experiential and viewpoint diversity; and
- affect the numbers of low-income individuals, including minorities, who participate in and successfully graduate from higher education.

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[68] Commonwealth of Pennsylvania/U.S. Department of Education, Office for Civil Rights, *Status Report for Year Ending June 30, 2002*, at 13 (on file with the Office for Civil Rights).
[69] FLA. ADMIN. CODE ANN. R. 6A-10.024 (2002).

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Educational benefits from these programs are emerging. Many of the developmental approaches are designed to attack root problems in our nation's schools. The expansion of more challenging course work, teacher training seminars and the tutoring of tens of thousands of students can over time transform public schools. The long-term effects will be better-prepared high school and college students and more diverse student bodies.

These race-neutral alternatives are also creating better incentives for students. Class-rank plans send a message to students that if they will study hard and rise to the level of competition within their schools, they will be admitted to a prestigious state university. Better incentives will produce better academic performance.

The reconsideration of race-preferential policies is also fostering an atmosphere of innovation. State government officials and administrators of public educational institutions are now re-thinking traditional policies, searching for new ideas and implementing many of them. The willingness to attempt new approaches is a positive development for our educational system.

The legal and constitutional benefits of race-neutral approaches are also evident. By adopting race-neutral approaches, postsecondary institutions can avoid costly and counterproductive litigation.

It is also evident that there can be significant social benefits from race-neutral policies. College campuses are often divided by bitter debates about the role of race and ethnicity in admissions. If postsecondary institutions aggressively implement race-neutral policies and maintain diversity, the contentious atmosphere could be replaced by constructive efforts to resolve the root causes of inequality. In addition to President Bush's recent statement endorsing race-neutral policies, the Citizens Commission on Civil Rights, a prominent civil rights organization, has also publicly called for further study of these issues and suggested that this could create common ground between those who traditionally oppose one another on these issues.[70]

There is already evidence that socioeconomic approaches, combined with percentage plans, can diversify student bodies in ways that had not previously been achieved.[71] In Texas, before the *Hopwood* decision, students from only

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[70] Arthur L. Coleman, "Diversity in Higher Education: A Continuing Agenda," in *Rights at Risk: Equality in an Age of Terrorism, Report of the Citizens Commission on Civil Rights* at 71-78 (Dianne M. Piché, William L. Taylor, and Robin A. Reed eds., 2002)

[71] The evidence primarily relates to the experiences in Texas, Florida and California, and is a product not just of the class-rank approaches adopted in those states. The statistics outlined below have been achieved as a result of the comprehensive policies these states have implemented, from innovative skills-development programs to class-rank admissions to consideration of socioeconomic factors. As the One Florida Accountability Commission put it, "The key to this race neutral success lies in multiple strategies of expanded recruitment, financial aid, and

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about 10 percent of more than 1,500 Texas high schools made up 75 percent of each entering class at the Austin campus.[72] Those "feeder schools," both public and private, were generally in wealthy suburban districts with high per pupil expenditures, state of the art facilities, and many advanced classes. Now students from any school in the state have realistic opportunities to enroll in universities such as UT-Austin and Texas A&M. One specific example is Highlands High School in San Antonio where more than three-quarters of the students are economically disadvantaged, and, prior to the 10 percent plan, had only one graduate attend the University of Texas at Austin. Fourteen Highlands graduates enrolled at UT-Austin in 1992 as a result of the percentage plan and a special scholarship aimed at schools in poor and working class areas.[73]

In California, more students from traditionally low-performing schools are gaining admission. The impact of the University of California's "Eligibility in the Local Context"-the 4 percent plan-is greatest on those high schools that typically sent few students to U.C. campuses. For example, the percentage of students from California's lower-performing schools applying to the U.C. system has increased from 15 percent in 1999 to 16.3 percent in 2002. Of those applicants, the percentage of admissions grew from 15.6 percent to 16.7 percent. The rate of admission for students from low performing schools also rose from 78.7 percent in 1999 to 80.3 percent in 2002.[74]

More rural students are also gaining admission in California. A University of California report concluded, "Participation in ELC by schools in urban and rural areas was above 93 percent in the first year and about 97 percent in the second year of the program [2002]. The special process, instituted for 2001, especially helped rural schools raising their participation rate from 76.6 percent to 93.6 percent. Substantial geographic diversity was achieved through ELC participation[.]"[75]

Moreover, U.C.-Berkeley enjoys significantly greater economic diversity than competitive colleges that rely on racial rather than economic admissions approaches. Recipients of Pell grants (roughly the bottom economic third) constitute 30 percent of students at U.C.-Berkeley, levels many times higher than

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partnerships to help public schools improve and better prepare students for success in postsecondary education." *supra* note 16, at 3.

[72] Gerald Torres and Penda Hair, *The Texas Test Case: Integrating America's Colleges*, THE CHRON. OF HIGHER EDUCATION, at B20, (October 4, 2002).

[73] *Id.*

[74] *Fall 2002 Freshman Admissions to the University of California,* at www.ucop.edu/news/factsheets/2002admisum.pdf (last visited March 10, 2003).

[75] University of California, *Eligibility in the Local Context Program Evaluation Report, Prepared for the May 2002 Regents Meeting* at 3, at http://www.ucop.edu/sas/elc/LettersAndQA/ELC_Report_for_Regents_May_2002.doc (last visited March 10, 2003).

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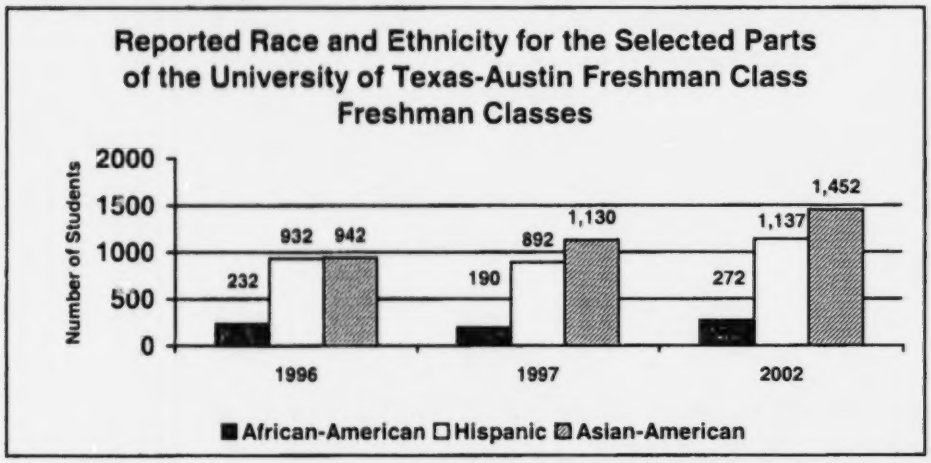
at institutions like the University of Virginia (9 percent), Princeton (7 percent) or Harvard (6 percent).[76]

These race-neutral plans have also resulted in participation rates of minorities comparable to those of race-based ones. Obviously, any race-neutral program is unlikely to produce racial diversity with the precision that using race will. But current evidence suggests that they can have the incidental benefit of producing a substantial amount of racial diversity.

The steps taken by the state of Texas, including but not limited to the 10 Percent Plan, have had the by-product of restoring racial and ethnic diversity across the university system to pre-*Hopwood* levels.[77] Total fall enrollment for all U.T. institutions in 1996 included 6,555 African American students, or 4.4 percent; in 2001, 7,413 African American students were enrolled, or 4.6 percent of the total enrollment. It is a similar story for Hispanic students. They increased from 45,455 (30.9 percent) in 1996 to 53,258 (33.2 percent) in 2001. Asian Americans also increased their representation across the University of Texas system-from 10,584 students (7.2 percent) in 1996 to 13,340 (8.3 percent) in 2001.



University of Texas System, *2002 Key Statistical Report*, January 2002.

The University of Texas at Austin has also seen increased enrollment of racial and ethnic minorities. The number of African Americans, Hispanics and Asian Americans enrolled as freshman at U.T.-Austin in 2002 is now higher than in

[76] Donald E. Heller, (report on Pell Enrollment data prepared for the James Irvine Foundation using U.S. Department of Education data from the 1998-99 academic year), at http://www.irvine.org/programs/higher_ed/pell_listing_98_99.htm.

[77] *See The University of Texas System, Key Statistical Report 2002* at 95, at http://www.utsystem.edu/News/KeyStatisticalReport/2002/Section4-withTOC.pdf and The University of Texas System, Reporting Package for the Board of Regents 2001 at 89 at http://www.utsystem.edu/mis/FEB2001/RRP2001WebEdition.pdf.

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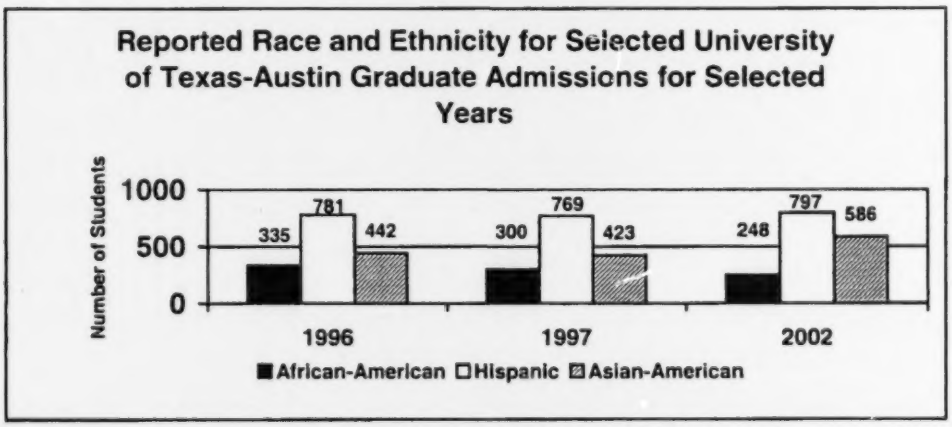
199[illegible].[78]

At the graduate level, the U.T. system has again seen positive rates of participation by minority students.[79] Across the entire system, the percentage of African American students has held steady for several years, from 1,305 students in 1996 to 1,307 students in 2001 (3.9 percent of the total enrollment in 1996 to 3.6 percent in 2001). Asian American students have also held steady, at approximately 6.5 percent. Hispanic students have increased notably in graduate school programs across the U.T. system, from 4,765 students (14.2 percent) in 1996 to 6,225 (17.2 percent) in 2001. At U.T.-Austin, substantially more Hispanics and Asian Americans are in graduate school than in 1996.[80] However, the number of African Americans in graduate school has declined (from 335 in 1996 to 248 today).[81]



University of Texas System, *2002 Key Statistical Report*, January 2002.

While the number of African American and Hispanic students admitted to the U.T. Law School has declined, these two minority groups combined still represent approximately 14 percent of the first year class.[82] It is clear that even the Law

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[78] *Enrollment of first-time freshman minority students now higher than before Hopwood court decision*, at: http://www.utexas.edu/admin/opa/news/03newsreleases/nr_200301/nr_diversity030129.html (January 29, 2003).

[79] *The University of Texas System, Key Statistical Report 2002* at 98, at http://www.utsystem.edu/News/KeyStatisticalReport/2002/Section4-withTOC.pdf (last visited March 10. 2003).

[80] *Enrollment of first-time freshman minority students now higher than before Hopwood court decision, supra* note 81.

[81] *Id.*

[82] *Id.* In the fall 2002 first year class at the Law School, African Americans represented 3.6% of the class and Hispanics represented 10.1% for a combined total of 13.6%. In 1996, these two groups of students represented 18.2% of the class. The number and percentage of Asian Americans attending the Law School has remained constant – at approximately 90 students, or 6%

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school continues to reflect significant levels of racial diversity.[83] In 2002, *Hispanic Business* magazine named the Law School the number one law school in the country for Hispanics.[84] The increase in the number of minorities enrolled at U.T.-Austin has been reflected in some of the most coveted majors, such as business, engineering, and the sciences.[85] Most encouragingly, research shows that across all racial groups, the "top 10-percenters" at the University of Texas at Austin have performed as well academically as other students.[86]

Florida has seen similarly positive results. The number of minority students who were enrolled in the 2002 class entering the state's university system was higher than in 1999 (by approximately 2,000 students), the year prior to the elimination of racial preferences, and the percentage of minority students has remained steady (at approximately 36 percent).[87] Every minority group is represented in higher numbers-African Americans (from 5,099 in 1999 to 5,665 in 2002), Hispanics (from 4,059 to 5,106), and Asian Americans (from 1,348 to 1,779).[88] The percentages of Hispanic and Asian American students have increased while the percentage of African American students has decreased.[89] The admission rates in Florida's graduate schools have also held steady.[90]

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of the class.

[83] *Id.*

[84] *UT Law Rated #1 By Hispanic Business Magazine for 2nd Year*, at http://www.utexas.edu/law/news/030402_hispanic.html (March 4, 2002).

[85] Gerald Torres and Penda Hair, *supra* note 74.

[86] Rose Gutfield, Ford Foundation Report Online, *supra* note 37.

[87] *Lt. Gov. Brogan Announces Increase in Minority Enrollment at the University of Florida*, at http://www.oneflorida.org/myflorida/government/governorinitiatives/one_florida/enrollment-9-6-02.html (September 6, 2002). *See also*, Vincent Kiernan, *Affirmative Action Rollback in Florida Has Not Hurt Minority Admissions, State Figures Indicate*, THE CHRON. OF HIGHER EDUCATION, September 9, 2002.

[88] One Florida, *State University System Enrollment Statistics, 2002*, at http://www.oneflorida.org/myflorida/government/governorinitiatives/one_florida/minority_enrollment.html (last visited March 10, 2003).

[89] *Id.*

[90] *One Florida Accountability Commission Report*, *supra* note 16, at 3 (using 2001 enrollment figures).

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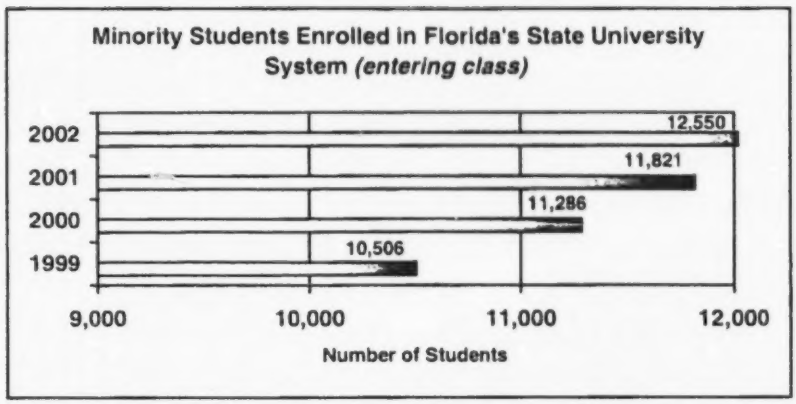

Gov. Jeb Bush, Executive Office of the Governor, "Lt. Governor Brogan Announces Increase in Minority Enrollment at the University of Florida," Press Release, One Florida Initiative, Sept. 6, 2002.

The state's flagship institution, the University of Florida at Gainesville, has seen larger numbers of minorities enrolling as well. For the class entering in the fall 2002, the numbers of first-time-in-college African American students increased over the previous year by 43.26 percent, from 460 students to 659 students.[91] The number and percentage of African American students at U.F.-Gainesville is now higher than in 1999. Similarly, the number of Hispanic students grew in one year by 13.13 percent (from 716 to 810 students), and the number of Asian American students grew by 6.78 percent (487 to 520).[92]

The University of California system has slightly increased its minority enrollment through race-neutral alternatives.[93] In the freshman classes that accepted offers of admission to the various U.C. campuses in the fall of 2002, black and Hispanic students constituted 17.2 percent of the total student population, a level that exceeded the proportion enrolled under the previous race-based admissions system in 1997 (16.9 percent).[94] The percentage of African American and Hispanic students accepting offers of admission has increased each year since 1998.

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[91] One Florida, *State University System Enrollment Statistics, 2002*, *supra* note 91.
[92] *Id. See also, Lt. Gov. Brogan Announces Increase in Minority Enrollment at the University of Florida*, *supra* note 90.
[93] *University of California Distribution of Statement to Register (SIRs) for Admitted Freshmen Fall 1997 through 2002*, at http://www.ucop.edu/news/factsheets/froshsirs97-021.pdf (last visited March 10, 2003).
[94] *Id.*

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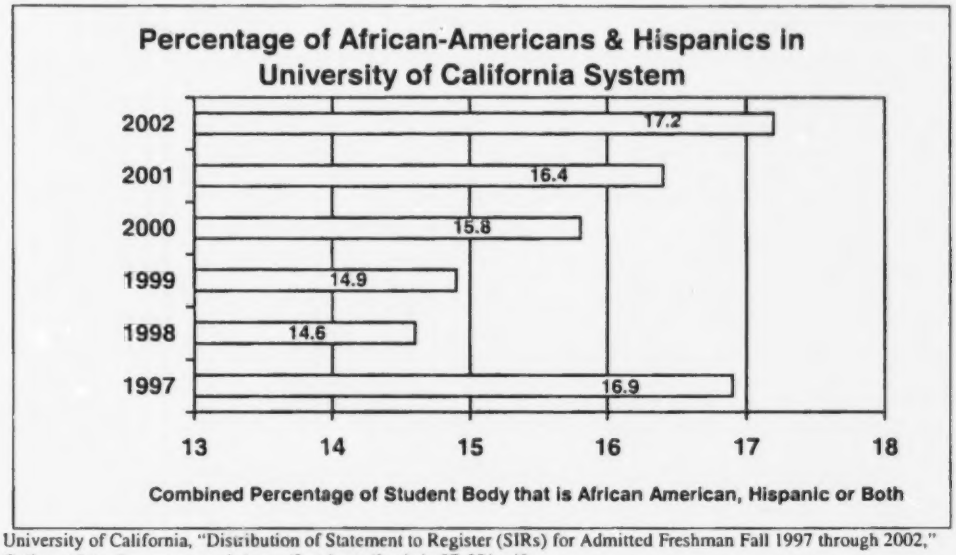

University of California, "Distribution of Statement to Register (SIRs) for Admitted Freshman Fall 1997 through 2002," Online at http://www.ucop.edu/news/factsheets/froshsirs97-021.pdf

The picture at the U.C. system's most selective campus, U.C.-Berkeley, is more complicated. One factor is the University's agreement with the City of Berkeley to limit the size of the student body, resulting in a decrease in the number of students admitted. Another factor is a one-time precipitous drop in the number of minority students enrolled. In 1998, the year after race-preferential policies were prohibited, the percentage of African American and Hispanic students admitted dropped sharply from 21.1 percent to 10.1 percent of the student body. Each year subsequently, the numbers of minorities have increased. By 2002, the numbers of students from these under-represented groups is 14.7 percent-still below the rate of admission in 1997, but significantly higher as the new policies are being fully implemented.[95]

While U.C.-Berkeley admits fewer minorities, the admission rates of other institutions within the U.C. system are dramatically higher. For example, at U.C.-Riverside there are more than twice as many African American students as in 1997 and at U.C.-Riverside the numbers are almost double.

There are signs that the statistics on minority participation will improve over time. In all three states, the trend lines for the numbers of minorities being admitted to college-and to the most selective schools within those colleges-are all up, year after year. Moreover, the value of many race-neutral projects may not be experienced for several years, as they gradually transform the educational system through teacher training programs and enhanced preparation of young people.

These encouraging admissions statistics have been achieved even though Texas,

[95] *Id.*

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California and Florida officials are at a disadvantage because they not playing on a level field. While officials in these states are strictly limited to race-neutral admissions strategies, their competitors around the country are able to employ race-based policies. This no doubt depresses the minority participation rates at these three state university systems.

CONCLUSION

No single race-neutral program is a panacea. What is needed now is more research and discussion about the varieties of race-neutral programs that might be employed in different settings. This research must be unbiased and objective. As Americans, we owe it to our heritage and to our children to meet these educational and civil rights challenges head on, rather than looking for shortcuts that perpetuate poor educational achievement and divide us by race. If we are persistent in implementing race-neutral approaches, the end result will be to fulfill the great words of Dr. Martin Luther King Jr., who dreamed of the day that all children will be judged by the content of their character and not the color of their skin.[96]

> "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."
>
> Dr. Martin Luther King, Jr.

[96] Dr. Martin Luther King, Jr., "I Have A Dream," August 28, 1963 available at http://www.stanford.edu/group/King/popular_requests (last visited March 18, 2003).

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